UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

ALLEN WALL,

Plaintiff,

v.

MINNESOTA MUTUAL LIFE INSURANCE COMPANY,[1]

Defendant.

NO. CIV. S-04-1314 WBS DAD

MEMORANDUM AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

----oo0oo----

Plaintiff brings this action alleging state-law claims for breach of an insurance contract and breach of the implied covenant of good faith and fair dealing ("bad faith"). Jurisdiction is predicated on 28 U.S.C. § 1332 (diversity). Pursuant to Federal Rule of Civil Procedure 56, defendant moves for summary judgment only as to plaintiff's bad faith claim.

[1] Defendant states that its true name is "Minnesota Life Insurance Company," and contends that it has been erroneously sued as "Minnesota Mutual Life Insurance Company." (See Def.'s Objections to Evidence Submitted by Pl. in Opp'n to Mot. for Summ. J. at 1). Plaintiff does not contest that defendant's true name is "Minnesota Life Insurance Company." The court therefore refers to defendant as Minnesota Life Insurance Company.

The court must grant summary judgment to a moving party "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The party adverse to a motion for summary judgment may not simply deny generally the pleadings of the movant; the adverse party must designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

Because this is a diversity action involving only California state-law claims, the court must apply California law. See Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78-79 (1938). The ultimate test of bad faith by an insurer under California law is whether the insurer's actions were unreasonable. Gourley v. State Farm Mut. Auto Ins. Co., 53 Cal. 3d 121, 127 (1991). Even if an insurer's denial of benefits is ultimately determined to be incorrect and a breach of an insurance contract, a bad faith claim cannot succeed without showing that the denial of benefits was arbitrary or unreasonable. See Amadeo v. Principal Mut. Life Ins. Co., 290 F.3d 1152, 1162 (9th Cir. 2002); Love v. Fire Ins. Exchange, 221 Cal. App. 3d 1136, 1151 (1990)("[T]he reason for withholding benefits must have been unreasonable or without proper cause.").

Stated another way, "where there is a genuine issue as to an insurer's liability under the policy for the claim asserted by the insured, there can be no bad faith liability imposed on the insurer." Chateau Chamberay Homeowners Ass'n v. Associated

Int'l Ins. Co., 90 Cal. App. 4th 335, 347 (2001); accord Fraley v. Allstate Ins. Co., 81 Cal. App. 4th 1282, 1292 (2000); see also Guebara v. Allstate Ins. Co., 237 F.3d 987, 992 (9th Cir. 2001); Phelps v. Provident Life & Accident Ins. Co., 60 F. Supp. 2d 1014, 1021-24 (C.D. Cal. 1999)(applying California law and granting summary judgment on bad faith claim for denial of disability benefits where "dispute regarding its liability existed at the time" plaintiff's claim was denied).

The court counts fourteen (14) different physicians who have examined plaintiff Alan Wall and/or the medical files he sent to defendant to support his disability claim, many of whom arrive at different conclusions. The numerous conflicting medical opinions with regard to plaintiff's disability claim suggest that defendant should not be faulted for relying on independent medical examiners to evaluate the opinions of plaintiff's doctors and plaintiff's own subjective complaints of disability.

For example, some of the clinical evidence sent to defendant by plaintiff covered the years 1990-1995, and Dr. Dixit's updated APS stated that plaintiff's symptoms first appeared in the year 1990. (Gosse Decl. Ex. H at STND589-00135). However, medical records possessed by plaintiff's own personal physician, Dr. Zaks, indicated that in 1997 an orthopedic surgeon, Dr. Rao, concluded that plaintiff was not disabled. (Id. Ex. I at STND589-00190). This suggests that plaintiff had claimed he was disabled before, but a specialist referred by plaintiff's own doctor disagreed. Confronted with this information, it would not appear that defendant acted arbitrarily

or unreasonably in seeking independent medical opinions regarding plaintiff's condition.

Defendant also appears to have been continually willing to accept new opinions and comments from plaintiff's doctors on plaintiff's condition, and defendant consistently kept plaintiff aware of the claim evaluation process by letter. (See, e.g., id. Exs. K, P, S, AA, DD). Through these letters, defendant repeatedly invited plaintiff to call or write with any questions and to provide any additional medical information he wished to submit in support of his claim - even after plaintiff sent an insulting and threatening letter to defendant's representative. (Id. Ex. CC at STND589-00378 ("You skew/screw w/ my survival, I'll skew/screw w/ yours, you corporate ass-kissing portfolio geeks . . . . Better watch out, corpoRAT jacka$$es.")(emphasis in original). Defendant's solicitous process would not seem to be the mark of an insurer capriciously denying benefits.

In his opposition to this motion, plaintiff responds that "fibromyalgia is a medically determinable condition that can cause disability," acknowledged by the Ninth Circuit and the American Medical Association, and that blurred vision can be one of the symptoms of this condition. (Pl.'s Mem. of P. & A. in Opp. to Mot. at 16)("Pl.'s Opp.").[2] Defendant does not dispute that fibromyalgia is a real medical condition, or that it can

[2] Defendant objects to plaintiff's opposition on the ground that it was untimely filed. (See Def.'s Reply at 2). However, defendant was not prejudiced by plaintiff's late filing, as the court finds defendant was able to prepare an adequate reply that was fully responsive to plaintiff's opposition. The court has an interest in deciding cases on their merits and not on technicalities. Olvera v. Giburbino, 371 F.3d 569, 573 (9th Cir. 2004). Therefore, this objection is overruled.

cause disability. Defendant's motion hinges on the argument that there was at least a genuine issue as to its liability when the decision was made to deny plaintiff's claim. (Def.'s Mem. of P. & A. in Supp. of Mot. for Summ. J. at 1, 16)("Def.'s Mot.")

Plaintiff claims that he suffers from blurred vision caused by fibromyalgia. In support of that claim, he points to the deposition of Dr. Gardner stating that plaintiff complained to him of blurry vision, and his own deposition, in which he testified that he left his job because he could no longer read well enough to do the job. (Bianchi Decl. Exs. H, I, Q (Gardner Dep.) at 31:20-23, Ex. L (Wall Dep.) 14:4-12).[3]

Defendant, on the other hand, points to the broad

---

[3] Dr. Gardner testified that "I just noticed that in the first visit [plaintiff] did also say that he was unable to read and that the eyes were a change [sic] from the fibromyalgia." (Bianchi Decl. Exs. H, I, Q (Gardner Dep.) at 31:20-23). What Dr. Gardner fails to state in his deposition, however, is that he actually determined that plaintiff had blurry vision or any reading difficulty. The following interchanges from Dr. Gardner's deposition highlight this point:

Q What symptoms of fibromyalgia do you consider Mr. Wall to have?
A He has diffuse pain over a lot of his muscles and low energy.
Q Anything else?
A No.
Q That was no?
A No -- Yes, that was no.

(Cherne Decl. Ex. B (Gardner Dep.) at 7:22-8:6)(emphasis added).

Q Well, is there something about his condition that would make it difficult to read?
A I know if a person's depressed they'll have trouble concentrating. If somebody has a neck and spine like this, it's conceivable that the -- the physical position you'd have to be in to read could be painful.
Q Would he have have any trouble seeing the page?
A I don't see why he would. I'm not -- I'm not aware of any eye deficit. Doesn't necessarily rule it out, but I don't -- I'm not aware of any.

(Bianchi Decl. Ex. F (Gardner Dep.) at 29:1-29:11)(emphasis added).

opinions of numerous medical professionals that plaintiff was not disabled within the meaning of the policy, and that even if plaintiff had fibromyalgia, he could still perform his job functions: Dr. Rao in 1997 (Id. Ex. I at STND589-00190)("He is not disabled."), Dr. Swartz in 1999 (Id. Ex. L at STND589-00255)("I do not find any functional impairments . . . Mr. Wall is capable of performing the substantial and material duties of his usual occupation."), Dr. Heisler in 2000 (Id. Ex. M at STND589-00265)("[H]is impairment does not appear to be sufficient to explain his ability to return to his former occupation except for what appears to be a lack of motivation and energy."), Dr. Swartz again in 2000 (Id. Ex. O at STND589-00275)("If there is any fibromyalgia existing, it would be mild and would not be of clinical significance or disabling."), Dr. Friedberg in 2000 (Id. Ex. Y)("I did not find [plaintiff] to be disabled."), Dr. Fraback in 2001 (Id. Ex. SS)("I don't find evidence that [plaintiff] has a condition or combination of conditions that should preclude working full-time as a community college instructor."). Even if it ultimately turns out that all of these medical professionals were unaware of plaintiff's alleged disabling blurry vision, and thus their opinions were incomplete and flawed, plaintiff will ultimately have the burden to show that defendant knew of this disability claim and unreasonably or arbitrarily ignored it. Celotex, 477 U.S. at 323-24.

Reasonableness of an insurer's conduct is ordinarily a question of fact. Carlton v. St. Paul Mercury Ins. Co., 30 Cal. App. 4th 1450, 1456 (1994). In this case, there has been no demand for a jury, so this court will be the ultimate trier of

fact. It will be for this court to determine from the evidence whether, in the face of the laundry list of physicians who made direct and broad statements to defendant that plaintiff was not disabled, it was unreasonable or arbitrary for defendant to deny coverage. It will also be for this court to determine from the evidence whether plaintiff properly apprised defendant of his alleged disabling blurry vision in compliance with the policy, which requires written proof of loss. Those questions of are better left for the court to resolve at the time of trial rather than on summary judgment. At that time, all of the evidence will be presented, the court will have an opportunity to observe the witnesses and to weigh any conflicting evidence, and the court will be in the best position to make the determination as to whether there is any genuine issue as to defendant's liability under the policy for the claim asserted by the plaintiff.

IT IS THEREFORE ORDERED that defendant's motion for summary judgment as to plaintiff's claim for breach of the implied covenant of good faith and fair dealing be, and the same hereby is, DENIED, subject to the court making its determination on the issues raised thereby at the time of trial.

DATED: August 10, 2005

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE